IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 2113 OF 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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SHRI AMARSINHBHAI MALABHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & ORS. - Respondent(s)

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Appearance :
SHRI JAGDISH MEHTA for SHRI YOGESH S. LAKHANI for Petitioner(s).
SHRI A.Y. KOGJE, AGP for Respondent(s) : 1 - 3.
None for Respondent(s) : 4 – 6 though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 06/12/2006

ORAL JUDGMENT

1. The short facts leading to the present petition are that on 27th January, 1962, Bhudan Samiti alloted 8 Acres of land, which was part of Survey No.179 to one

Rana Punja Ahir (respondent No.4); somewhere in the year 1978, the said Rana Punja sold 4 Acres each to Bhagwandas Haridas (respondent No.5) and Pancha Jiva (respondent No.6). After the said sale, certain entry was made and after some time, the entry was cancelled, but in an appeal, the Collector directed restoration of the entry. Thereafter, the petitioner purchased the said 8 Acres of land under a registered sale deed from the said Bhagwandas Haridas and Pancha Jiva.

1.1 The entry came to be mutated in the revenue records *vide* Entry Nos.2770 and 2771 and the same was certified on 12th April, 2003. After receiving the information that the transfer was invalid, the tenure was a new tenure, which could not be transferred without prior permission of the Competent authority, the Deputy Collector initiated proceedings under the Bombay Land Revenue Code, 1879 ("the Code" for short) and registered Sharat Bhang Case No.289 of 1990. The petitioner was issued a notice and was required to show cause.

1.2 The petitioner raised manifold pleadings/defences and submitted that after a lapse of more than seven years of Entry dated 12th April, 1983, the matter could not be reopened, he had spent a good fortune

in developing the land and as the land was allotted to Rana Punja under the Bhudan Scheme, the provisions of the Code would not be applicable. The Deputy Collector in the original proceedings, the Collector in the appeal and the Secretary in the revision, by their separate orders, rejected the defences and held that present was a case of breach of the conditions.

1.3 Being aggrieved by the said order dated 30th September, 1991 passed by the Deputy Collector in Sharat Bhang Case No.289/1990, which was confirmed by the Collector and the Secretary, the petitioner is before this Court.

2. The learned Counsel for the petitioner, placing reliance upon a single Bench judgement of this Court in the matter of ***Cold Cap Tyres Pvt. Ltd. vs. Additional Chief Secretary***, [***2005(1) G.L.H. (U.J.) 1***], submitted that the Deputy Collector was not entitled to exercise his powers after lapse of eight years. His further submission is that if the transfer made by Rana Punja Ahir has been accepted to be valid, then, there is no reason to hold that present would not be a valid transaction. It was also submitted that the Bhudan Act would be applicable to the transfer of the land and the

provisions of the Code would not apply.

3. Relying upon a judgement of the Apex Court in the matter of ***State of Orissa & Ors. vs. Brundaban Sharma & Anr.***, [***1995 Supp.(3) S.C.C. 249***], Shri A.Y. Kogje, learned Assistant Government Pleader, submits that as the entries made in the year 1983 were absolutely illegal and the transaction in favour of the present petitioner was contrary to the provisions of law, its validity could be examined at any time. His submission is that the land was allotted to Rana Punja Ahir under the Bhudan Act, but, such allottee would become a tenure holder under the Code. It is then submitted that if action of 1978 is held to be valid, it would not be a license in favour of the tenure holder to go on repeating the illegality.

4. In the matter of ***Cold Cap Tyres Pvt. Ltd.*** (*supra*), the learned single Judge of this Court has observed that exercise of powers conferred by Section 65 and 211 of the Bombay Land Revenue Code by the revisional authority after more than 3 years of grant of non-agricultural permission, that too, on the ground of irregularity only would not be exercise of powers within reasonable time.

Present is not a case where the sale/entry is sought to be challenged on the ground of irregularity. The State has come out with a straight case that present is a case of void sale, sale without permission and sale which violates the provisions of law and is in the teeth of the provisions of law. The said judgement in the matter of ***Cold Cap Tyres Pvt. Ltd.*** (*supra*) would have no application to the present matter.

5. In the matter of ***State of Orissa*** (*supra*), the Supreme Court has observed that if no period of limitation is prescribed under the Act, the revisional power must be exercised within a reasonable time, but, validity of a nonest order can be questioned in any proceeding at any stage. In the said matter, tenancy rights were conferred by the Tehsildar without obtaining prior confirmation of the Board of Revenue. The Supreme Court observed that such an order would be void and the Board would be justified in quashing the said order even after twenty seven years had lapsed.

Present is a case of identical nature. The entry made in favour of the petitioner was without authority in law because prior to making the entry, nobody enquired into the fact that the new tenure was

sold with permission or without permission. An entry would not confer any power on the petitioner, nor would make the void or illegal sale a legal sale. Under the circumstances, the question of delay, which was though raised before the subordinate authorities, but, was not answered by them, would not assume any importance.

6. So far as applicability of the Bhudan Act is concerned, it must be noted that late Vinoba Bhave started collecting the land from big tenure holders so that it could be allotted in favour of the landless persons. The Bhudan Act in itself was a Scheme whereunder land was to be allotted by the Bhudan Committee constituted under the Act, to the landless persons. The Bhudan Act simply authorises the Committee to allot the land, but, did not give them any power to make the allottee a tenure holder. After receipt of the land, the land was required to be recorded as a tenure in favour of such allottee by the State Government under the concerned Code. If the Land Revenue Code recognised the tenure to be a new tenure and it continued to be so, then, a new tenure could not be sold without prior permission of the concerned authority. Section 63 of the Code does not talk of any *post facto* sanction, it talks of a sanction before the transfer of the land. Under the circumstances, the

submission of the petitioner's Counsel that the matter be remanded to the authorities for obtaining *post facto* sanction would also not survive, nor applicability of the Bhudan Act would assume any importance.

7. It was last submitted that the land in dispute is the only source of livelihood of the present petitioner and as he has spent a good fortune on it, the lapses be condoned. The lapses, which otherwise can be condoned by the authorities, can certainly be condoned either by the authorities or, in case of their failure, by the High Court, but, if such lapses cannot be condoned under the Act by any authority constituted or prescribed under the Act, then, the High Court would not be authorised to condone such lapses under Article 226 of the Constitution of India. The Court does not become an erratic monarch, it is still bound by the law. What cannot be done by the authorities under the Act cannot be done even by the High Court under Article 226.

8. For the reasons stated aforesaid, I do not think that I am required to interfere with the orders passed by the authorities.

9. The petition deserves to and is, accordingly,

dismissed. Rule is discharged. No costs.

10. At this stage, the learned Counsel for the petitioner submits that interim relief granted earlier be continued for some time so that the petitioner may have some respite.

Interim relief granted earlier shall continue to be in force till 8th January, 2007 and would lose its efficacy immediately thereafter.

[R.S.Garg, J.]

*kamlesh**